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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD PELLETIER

Defendant and Appellant.

B207940

(Los Angeles County  
Super. Ct. No. KA080917)

THE COURT:\*

Richard Pelletier, also known as Richard Lionel Pelletier, Jr., appeals from the judgment entered following his no contest plea to petty theft with priors (Pen. Code, § 666, count 1)<sup>1</sup> and admission of one prior felony strike within the meaning of sections 1170.12, subdivisions (a) through (d) and 667, subdivisions (b) through (i). He did not request a certificate of probable cause. Pursuant to the plea agreement, the trial court sentenced appellant to the midterm of two years, doubled to four years as a second strike.

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\* DOI TODD, Acting P. J., ASHMANN-GERST, J., CHAVEZ, J.

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

Appellant's conviction was based upon the following facts:<sup>2</sup>

On October 22, 2007, appellant entered the Sears store in the City of Industry, County of Los Angeles. He walked directly to the fragrance and watch department, picked up a watch and put it in his pocket. He then went up to the electronics department and then straight through the exit door and left the store. The foregoing actions of appellant were viewed on closed circuit television by store personnel and by the loss prevention agent who followed him. When detained outside of the store by the agent who demanded the property back, he gave it to her and returned to the store until the police arrived and arrested him.

We appointed counsel to represent appellant on appeal. After examination of the record, counsel filed an "Opening Brief" in which no issues were raised. On November 26, 2008, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider.

On December 24, 2008, appellant filed a brief claiming that his sentence is "inordinately severe" and cruel and unusual. He also purports to make a *Romero*<sup>3</sup> motion before this court, asking us to dismiss his prior felony strike conviction.

On January 29, 2009, appellant filed a "Supplement," the claims in which are largely unintelligible.<sup>4</sup> It nonetheless appears to assert that his sentence was improper in that misdemeanor petty theft was elevated to a felony without a jury determining the prior theft allegation required to convict him of the felony.

We reject these claims for the following reasons:

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<sup>2</sup> Because this matter was resolved pursuant to a plea agreement, we take the facts from the preliminary hearing.

<sup>3</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

<sup>4</sup> In the body of the "Supplement," appellant suggests that it is a Petition for Writ of Habeas Corpus. But the Supplement is not in the form of a petition nor does it refer to matters outside of the record. We therefore consider it a supplemental brief in this appeal.

1. Generally, defendants who have pleaded guilty or nolo contendere must obtain a certificate of probable cause before they may bring an appeal. (*People v. Moore* (2003) 105 Cal.App.4th 94, 99; § 1237.5.) Even with a certificate of probable cause, the appeal of a conviction based upon a guilty plea can only be for claims of constitutional, jurisdictional, or other grounds going to the legality of the proceedings. (§ 1237.5, subds. (a) & (b); *People v. Moore, supra*, at p. 99.) A claim on appeal that the sentence agreed to under a plea bargain is cruel and unusual punishment is a challenge to the validity of the plea requiring a certificate of probable cause. (See *People v. Rushing* (2008) 168 Cal.App.4th 354, 362.) The challenge to a negotiated sentence imposed as part of a plea bargain is properly viewed as a challenge to the plea itself, and thus requires a certificate of probable cause. (*People v. Vargas* (2007) 148 Cal.App.4th 644, 651.)

Appellant challenges the very sentence to which he agreed on the grounds that it is severe and cruel and unusual. These contentions go to the validity of his plea and therefore require a certificate of probable cause. Having not procured one, this claim is not cognizable in this appeal.

2. In any event, appellant's sentence is not cruel and unusual or unduly severe. It is not disproportionate to his offense when considered in conjunction with his lengthy history of recidivism. It does not offend fundamental notions of human dignity. (*People v. Ingram* (1995) 40 Cal.App.4th 1397, 1412-1413 [sentence cruel and/or unusual "if it is so disproportionate to the crime for which it is imposed that it 'shocks the conscience and offends fundamental notions of human dignity' [Citation]"], overruled on other grounds in *People v. Dotson* (1997) 16 Cal.4th 547.)

3. A failure to invite the trial court to dismiss under section 1385 forfeits that claim on appeal. (*People v. Lee* (2008) 161 Cal.App.4th 124, 129.) The record does not indicate that appellant made a *Romero* motion in the trial court. Consequently, that contention is forfeited on appeal. Further, appellant's plea agreement constitutes a separate basis for forfeiture of that claim. Finally, this court is not the proper forum in which to make a *Romero* motion in the first instance.

4. Appellant admitted the charge of petty theft with a prior, which includes an allegation that he had a prior theft conviction. His admission obviated the need for a jury determination of the prior conviction. (*People v. Sandoval* (2007) 41 Cal.4th 825, 836.)

We have examined the entire record and are satisfied that appellant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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